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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/700,089	11/03/2003	Erin Hall Sibley	PD-02-0421-B	9585
22462 7590 09/16/2008 GATES & COOPER LLP HOWARD HUGHES CENTER 6701 CENTER DRIVE WEST, SUITE 1050 LOS ANGELES, CA 90045				
EXAMINER				
RABOVIANSKI, JIVKA A				
ART UNIT		PAPER NUMBER		
2623				
MAIL DATE		DELIVERY MODE		
09/16/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/700,089

Applicant(s)

SIBLEY ET AL.

Examiner

JIVKA RABOVIANSKI

Art Unit

2623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 August 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 8-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 8-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on August 12th 2008 has been entered.

Specification

The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not). Claim 8 is dependent on claim 7 which is canceled.

Claim Rejections - 35 USC § 101

Claims 1 and 14 are rejected under 35 U.S.C. 101 because the claims provide computer-related products such as functional descriptive material (software) in combination with an appropriate computer readable medium that is not capable of producing a tangible result when used in a computer system – for example “receive” and “decode” as a function of vertical blanking interval do not produce a tangible result.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 – 6, 8 – 11 and 13 -16 are rejected under 35

U.S.C. 103(a) as being unpatentable over Krisbergh, Harold M.

(Krisbergh hereinafter) US 20040078824 A1.

Regarding claim 1, Krisbergh teaches:

A method for providing broadcast video programming, comprising:

(a) receiving video programming (Fig. 4 - the cable headend equipment; [0029]);

(b) encoding the video programming into a vertical blanking interval and unused Active lines of a television channel (the television transmission may alternatively include one or more *streams of data comprising video*, audio and other information in a digital and/or analog form. Accordingly, information can be inserted into these streams such as in the VBI as aforesaid or as part of an MPEG transport stream [0027]; Fig. 4/46);

(c) broadcasting the television channel and encoded video programming into a vertical blanking interval and unused Active lines of a television signal (Fig. 4/12)

(d) receiving the broadcast encoded video programming in a vertical blanking interval in a user device, wherein the user device comprises (Fig.6/terminal 54):

(i) tuning hardware configured to receive normal over-the-air terrestrial broadcasts and to pass the encoded video programming in a vertical blanking interval (Fig. 6/94; television distribution systems and networks include but are not limited to orbiting satellite systems, terrestrial wireless cable systems [0024]);

(ii) vertical blanking interval software configured to:

(1) receive output from the tuning hardware (Fig.6/94,92); and

(2) decode the encoded video programming from the vertical blanking interval (Fig. 6/98);

(III) a screen and a speaker (Fig. 6/56; [0050]; and

(iv) decompression software configured to:

(1) decompress the decoded video programming (processor 96 for decoding and decompressing the coded and/or compressed refresh information [0049]); and

(2) output analog audio and video signals from the decoded video programming to enable a user to watch the video programming on the screen and speaker of the user device (television signal is displayed on the display device – Fig. 6/56; the MPEG 2 data stream is composed of video, audio streams [0046]).

Regarding claim 2, Krisbergh teaches:

The method of claim 1, wherein the unused Active lines comprise Active lines that are hidden above and below typical lines that a viewer can see on a normal television screen. It is well known that the vertical blanking interval is the time interval between the end of the last line of one frame or

field of a raster display, and the beginning of the next. During the VBI the incoming data stream is not displayed on the screen (unused Active lines). In analog television systems the vertical blanking interval can be used to carry digital data, since nothing sent during the VBI is displayed on the screen.

Regarding claim 3, Krisbergh teaches:

The method of claim 1, wherein the encoded video programming is completely transparent to the television channel that is broadcast (The encoded broadcast video signal (Fig. 6) is applied to a video blanking interval decoder that decodes the encoded broadcast video and the encoded video signal can be watch on the TV screen).

Regarding claim 5, Krisbergh teaches:

The method of claim 1, further comprising receiving the broadcast encoded video programming in a wireless device (television distribution systems and networks include orbiting satellite systems, terrestrial wireless cable systems – [0024]).

Claim Rejections - 35 USC § 103

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Krisbergh, and further in view of Russ, Samuel H. et al (Russ hereinafter) US 20020059642 A1.

Regarding claim 6:

The method of claim 5, wherein the wireless device comprises a receiver card for receiving the broadcast encoded video programming.

Krisbergh fails to teach a plug-in card for receiving encoded video program. However, Russ discloses PCMCIA card 163 (FIG. 1C) installed in the laptop [0083], [0052]).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Krisbergh with the teaching of receiver card as further taught in Russ to meet all limitation in claim 6, in order to help for user's mobility.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Krisbergh, and further in view of James, Randy (James hereinafter) US 20020019987 A1.

Regarding claim 8;

The method of claim 7, wherein the vertical blanking interval software further comprises subscriber management, conditional access, and encryption functions to control access to the video programming in the vertical blanking interval and unused Active lines.

Krisbergh discloses vertical blanking interval decoder, but fails to specify other functions. However, James discloses that the VBI receiver module is specifically designed for quick response VBI-ID/Message identification and subscriber communications processing – see include, but not limited to [0026].

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Krisbergh with the teaching of subscriber communication processing as further taught in James to meet all limitation in claim 8, in order to protect transmitted information from unattended access.

Regarding claim 9 see the analysis of claim 1 above where the claim limitation was analyzed.

Regarding claim 10 see the analysis of claim 2 above where the claim limitation was analyzed.

Regarding claim 11 see the analysis of claim 3 above where the claim limitation was analyzed.

Regarding claim 13 see the analysis of claim 5 above where the claim limitation was analyzed.

Regarding claim 14 see the analysis of claim 6 above where the claim limitation was analyzed.

Regarding claim 15 see the analysis of claim 7 above where the claim limitation was analyzed.

Regarding claim 16 see the analysis of claim 9 above where the claim limitation was analyzed.

Claims 4 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Krisbergh, in view of Corvin, Johnny B. (Corvin hereinafter) US 20010029610 A1.

Regarding claim 4;

Krisbergh fails to disclose the encoded video programming comprises a promotional cable channel. However, Corvin discloses that a program may be received on a program channel and a promotion may be received through this program channel's vertical blanking interval (VBI) – see [0024].

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Krisbergh with the teaching of video programming comprises promotional channel as further taught in Corvin to meet all limitation in claim 4, in order to supply users with more information.

Regarding claim 12 see the analysis of claim 4 above where the claim limitation was analyzed.

Contact

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jivka Rabovianski whose telephone number is (571) 270-1845. The examiner can normally be reached on M-F 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, VIVEK SRIVASTAVA can be reached on (571) 272-7304. Customer Service can be reached at (571) 272-2600. The fax number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status

information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Jivka Rabovianski/

/Vivek Srivastava/

September 11, 2008

/SPE/

/Vivek Srivastava/
Supervisory Patent Examiner, Art Unit 2623